Engaging Your Utility + Tips for 25A Procurement
Questions and Answers from the Webinar on 2/05/15

Q1: $100,000 per project, per year. Calendar of Fiscal?
A1: The DOER guidance document is clear that this is on a calendar year basis even though the statute is silent with respect to this issue. The three-year energy efficiency plans are reviewed on an "annual" basis, per calendar year. DOER believes that it is reasonable to apply this same annual review increment to the application of Chapter 25A, Section 14.

Q2: Can I use any vendor or do I need to use the utilities list?
A2: For Chapter 25A, Section 14, an investor owned utility approved vendor must be used.

Q3: What if the funding sources were separate?
A3: The limit is $100,000 per project, per year. The source of the funding is not the determining factor; it is the "total project cost." As cited in the statute, "total project cost" means all construction costs of an energy conservation project, whether borne by the utility, agency, authority or body including, without limitation, the costs associated with equipment purchase and installation of such equipment. We note that utility rebates are ultimately funded by the ratepayer, which, in this case, might be the "agency, authority or body." Consequently, any rebates or other monetary incentives that are ultimately provided by the utility, agency, authority or body **cannot** be subtracted from the "total project cost."

Q4: Can you define a project? Say if you have several buildings that need light projects done. They have the same fund source. Can each building be classified as a separate project?
A4: The definition of "energy conservation project" sets forth a long list of specific measures, each set apart with a semi-colon. The definition does not indicate whether these measures are to be aggregated for purposes of calculating the "total project cost" or whether each measure can be regarded separately as a discrete "total project." Given this ambiguity, we apply rules of proper statutory construction to ascertain a reasonable interpretation of the law. We note that punctuation is regarded as a part of the law, and it may be considered in its interpretation. (Sutherland Statutory Construction, sec. 47.15). By setting off each energy conservation measure with a semi-colon, we can infer that the law accommodates the possibility for each measure to be packaged into a separate "project." As such, we interpret the statute's reference to a "total project" as the installation of one clearly identifiable energy efficiency measure. For example, the installation of high efficiency lighting fixtures may be regarded as one "total project" in a building, and installation of new high-efficiency HVAC equipment in that same building may be regarded as a separate and distinct "total project." Each "total project" would require a separate contract with the vendor of each service. Yes, separate buildings can be classified as separate projects.

Q5: Are municipal light departments geared up to provide as much help as the investor owned utilities? (example Reading Municpal Light Department)
A5: No, the DPU does not regulate Municipal Light Departments and they are not subject to the energy efficiency requirements set forth in the Green Communities Act for investor-owned utilities. Check with your Municipal Light Departments to see if they have their own energy efficiency programs.

Q6: Can one simply divide the $120K project into two phases to get within the maximum project cost requirement?
A6: No.

Q7: Am I required to use section 14 in order to get the utility rebates?
A7: No, the MassSave program is available to all customers of an investor owned utility.

Q8: For a streetlight upgrade project, can the light and the photo cell be considered seperate projects, if the same vendor is doing install on both?
A8: The light and photo cell are part of the same project.

Q9: If one opts to finance the project cost, are the interest and any other finance related costs included?
A9: Yes. The limit is $100,000 per project, per year. The source of the funding is not the determining factor; it is the “total project cost.” **As cited in the statute, "total project cost'' means all construction costs of an energy conservation project, whether borne by the utility, agency, authority or body including, without limitation, the costs associated with equipment purchase and installation of such equipment.** We note that utility rebates are ultimately funded by the ratepayer, which, in this case, might be the “agency, authority or body.” Consequently, any rebates or other monetary incentives that are ultimately provided by the utility, agency, authority or body **cannot** be subtracted from the “total project cost.”